1. Abetment of extortion contrary to sections 109 and 387 of the Penal Code.

2. Conspiring with the first appellant to commit the offence of carrying arms, contrary to sections 6 and 3 (1) of the Public Order and Safety Proclamation, No. 50.

He was sentenced to three years rigorous imprisonment on the first charge and to death on the second charge.

Both appellants have appealed to this Court against their convictions and sentences.

The facts are that the second appellant supplied the first appellant with a loaded revolver which the first appellant used to commit the offence of extortion at Kepong, at about 8 p.m. on the 21st March, 1946. The victim chosen was a Chinese druggist, who, when threatened by the first appellant, closed with him. In the ensuing struggle the first appellant fired his revolver three times and inflicted three separate and distinct gun shot wounds on the druggist. One of the bullets which hit the druggist passed dangerously near his heart and the druggist is fortunate that he was not killed.

As regards the first appellant, there are no merits in his appeal against conviction and no grounds whatsoever for reducing his sentence of death. He obtained this loaded revolver for the specific purpose of committing the offence of extortion, and in committing that offence he fired the revolver three times and inflicted severe wounds on his victim. A worse case can hardly be imagined.

The appeal of the first appellant is accordingly dismissed.

As regards the second appellant, he was at first charged with one offence only, namely that of the abetment of extortion.

At the commencement of the trial of both the appellants Crown Counsel applied to add a second charge against the second appellant as follows :—

> That you, on or about the 21st March, 1946, at about 8 p.m. at Kepong did procure one Pang Fook to commit an offence under the Public Order and Safety Proclamation, No. 50, to wit, the offence of carrying arms, and thereby committed an offence punishable under sections 6 and 3 (1) of the said Proclamation.

The offence in this second charge is one for which one of the prescribed punishments is death and, in fact, the second appellant was convicted thereon and sentenced to death.

The learned trial Judge acceded to this request of Crown Counsel, and the trial proceeded without the second appellant having had adequate notice that he would have to meet another charge of an offence for which one of the prescribed punishments is death, and also without counsel having been assigned to defend him.

Clearly, the second appellant was prejudiced by having to face this second charge without adequate notice, and the learned trial Judge should have adjourned the trial under section 160 of the Criminal Procedure Code, which is as follows :—

> If the new or altered or added charge is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor, as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

Such an adjournment would have afforded adequate notice to the second appellant to know at his trial what charges he had to meet, and would also have enabled counsel to be assigned to defend him. Since the first appellant had counsel assigned to him, and the facts show that both appellants were acting together, the second appellant was at a disadvantage in having no counsel to defend him.

Accordingly, the appeal of the second appellant against his conviction under the Public Order and Safety Proclamation succeeds. That conviction and sentence are set aside and a retrial ordered.

As regards the appeal of the second appellant against his conviction for abetment of extortion, the appeal is dismissed.

Order accordingly.

KN'G CHONG HENG v. P. P.

[App. Crim. Juris. (Laville, J.) July 6, 1946]

Opium and Chandu Proclamation, Sections 4 (5) and 7 — Charge of Importing Chandu — Importation for self-consumption — Assessment of punishment — Length of period necessary for cure of addict to be taken into consideration.

In this case the accused appealed against a sentence of 6 months' r.i. for importing chandu, an offence under Section 7 of the Opium and Chandu Proclamation. At the trial accused admitted the offence and in his grounds of appeal he stated that he was an addict and that the chandu was for his own consumption.

Held, (1) that where there is evidence that the possession or importation or exportation was for self-consumption and the amount of chandu concerned bore this out, the Court should in assessing punishment bear in mind the provisions of Section 4 (5) of the Proclamation where the consumption of chandu is made an offence punishable by imprisonment for as long a term as is likely to cure the addict;

(2) that in this case, the District Judge had assessed a reasonable period for the cure of the addiction and that the appeal should be dismissed.

Accused in person.

R. D. Lloyd for the Public Prosecutor.

Laville, J. :—In this case accused appeals against a sentence of six months for importing chandu on 5.6.46. He admitted the offence, and in his grounds of appeal states he is an addict and that the chandu was for his own consumption.

His grounds of appeal are: (i) that he imported only a small quantity for his own use; and (ii) that he has a wife and two small children. The latter ground is irrelevant; it is a normal condition of man to have a wife and children and such a state cannot provide an excuse or mitigation for an offence of this kind. If accused had had any consideration for them he would have refrained from this offence. As to the former ground the amount of chandu imported is in my opinion only relevant in cases where the import can be taken to be for trade purposes.

The evils aimed at by the proclamation are twofold; the importation of chandu for trade and for self-consumption, and the provisions of section 7 seem to have both these objects in mind. The first is to be attacked by imprisonment and fine since imprisonment alone might be welcomed provided the profit remained for enjoyment after the offence had been purged. The second is to be attacked, as we see in section 4 sub-section 5 where consumption is made an offence, by imprisonment alone for as long a term as is likely to cure the addiction. This is taken to be a maximum period of one year.

In assessing the punishment, therefore, under section 7 for importing or exporting or possessing with that in view, if there is evidence that the possession or importation or exportation is for self-consumption and the amount of chandu concerned bears this out, the Court should, I consider, bear in mind the provisions of section 4 sub-section 5.

In order to aid the Court in this, the prosecution should have available expert medical opinion as to how long an abstention from the drug is necessary to cure an addict or enable him to overcome his craving. Such an opinion could merely state the minimum or maximum average times, and it would be for the Court to decide as best it could how much of this period would be needed in each individual case.

In considering the question of punishment under the Proclamation the possibility occurred to me that section 3 might not properly apply to the general possession of chandu. Section 3 is divided into 3 sub-sections: the first deals with surrender within 14 days of the Proclamation's date of opium, chandu and the utensils therefore; the second refers to compensation payable for such surrender; and the third deals with the subsequent possession and the penalty therefor.

It seems a possible view — I make no ruling as the point does not arise here — that the possession referred to is possession of opium and chandu already in possession of the person charged prior to 14.2.46. The arrangement of the section and the heavy penalty seem to tend to support such a possibility.

However that may be, in this particular case the learned District Judge has in my view assessed a reasonable period for the cure of the addiction and has stated that as his reason for the sentence.

I therefore dismiss the appeal and confirm the finding and sentence.

Appeal dismissed.

S. KARTHIGASU v. PUBLIC PROSECUTOR.

[Appellate Criminal Jurisdiction (Willan, C.J., Malayan Union, Murray-Aynsley, C.J., Singapore and Pretheroe, J.,) August 21, 1946]

Criminal Procedure.— Misdirection — Failure of Judge to direct assessors on a point raised by counsel for the defence as to the possibility of conviction on a lesser charge — Whether such misdirection occasions a failure of justice — Criminal Procedure Code, Section 422.

In this case the appellant was convicted of murder under Section 302 of the Penal Code. The evidence showed that he with others, beat the deceased to death in October 1944 and that they all had the common intention of beating the deceased with sticks to obtain information from him. At the trial, counsel for the defence specifically raised the question that one of the possible verdicts was a conviction under Section 331 of the Penal Code, that is, causing grievous hurt with a view to extorting a confession or information. In spite of this specific submission, the learned trial Judge in his summing up directed the Assessors that there were only